IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.71 OF 2006

Gati Limited .. Applicant
v/s.
M/s. Allergan India Limited .. Respondent

Ms. Shilpa Kapil for the applicant.

CORAM : SWATANTER KUMAR, C.J.

DATED : 26TH OCTOBER, 2007

P.C.

This arbitration application has been filed by the applicant under section 11 of the Arbitration & Conciliation Act, 1996. According to the applicant, he had entered into the transport agreement with the respondent on 1st August, 2004 and the said agreement was valid upto 31st March, 2005 with effect from 1st August, 2004. Certain disputes arose between the parties with regard to the shipment and transportation of certain goods. The applicant raised various claims against the respondent which have also been reiterated in this application. The contract between the parties provided for reference of

dispute to the arbitration in consonance with clause 11 of the Agreement which reads as under:-

"**11. Disputes, Arbitration and Jurisdiction**

11.1 All disputes arising out of or in the course of business and related to this Agreement be it accident cases, claims, police involvement, criminal and civil cases in Courts, Tribunals, Government, Semi-government offices or be it any settlement, adjustment or compromise are to be dealt absolutely and exclusively by the Transporter at its own costs, charges and expenses, not making the Company liable for any of the acts, deeds, matters, things done by the Contractor during the currency of this Agreement.

All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this Agreement or the breach thereof, the matter will be referred to the arbitration under the provisions of the Arbitration and Conciliation Act, 1996 or any amendment thereto and each party has a right to appoint one arbitrator and the appointed arbitrator will appoint the presiding Arbitrator and the Award made in pursuance thereof shall be binding on the parties. The venue for arbitration shall be Mumbai and the proceedings shall be in English language.

Save and except the above, the Mumbai courts will have the exclusive jurisdiction."

2. The applicant has filed the present application after serving the notice dated 12th December, 2005 upon the respondent, who despite notice, failed to appoint Arbitrator or concur with the appointment of the Arbitrator nominated by the applicant. Notice of this application was also served upon the respondent but he has not chosen to appear and therefore, this application has been heard and disposed of exparte. The averments made in the application have to be taken as correct. There is no reason for this court as to why the appointment of the arbitrator should not be made in terms of the arbitration clause. Clause 11 of the Arbitration agreement contemplates the appointment of the sole arbitrator, however, the respondent has failed to act upon the notice served in accordance with the arbitration agreement.

3. I hereby appoint Shri Suresh Kumar, Advocate as the sole arbitrator who will enter upon the reference and adjudicate the dispute as expeditiously as possible.

Application is accordingly, disposed of with no order as to costs.

CHIEF JUSTICE